

It is also objected that the allowance of the claims filed since the order of the 10th of January last, that they come in too late, because it is said that order directed the Auditor to state a final account, it being as expressed in the opinion fair to infer that all the holders of Jones' paper given in exchange for that of Hancock and Mann, had already come in.

In cases like the present, the practice of the court is to allow creditors to come in at any time before a distribution of the proceeds of the sale has been actually made. So long as the fund is under the control of the court, it will let a creditor in who has been guilty of no negligence, and if necessary send the case to the Auditor to have a new account stated at his expense, as it must frequently happen that notwithstanding the usual method is resorted to to notify creditors, they are not in fact apprized of the proceedings. *Strike's Case*, 1 *Bland*, 86; *Hammond vs. Hammond*, 2 *Bland*, 364. If, to be sure, a creditor has been notified of the proceedings, and after a reasonable time allowed him to support his claim by proofs, he has failed to do so, and an account rejecting his claim because of such failure has been ratified by the court, it will not be reopened at his instance to permit him to introduce fresh evidence, though the fund still remains in the hands of the trustee. *Kent vs. O'Hara*, 7 *G. & J.*, 212. But, as observed by the Chief Justice in that case, if the claim of the creditor had not been submitted to the Chancellor, and passed upon before the fund remaining in the hands of the trustee had been parted with, it would have presented a different case.

In this case these additional claims which have been filed since the last order have not been before submitted to the Chancellor, and passed upon by him, and, therefore, I think if they are sufficiently sustained by evidence, the holders of them are entitled to participate with the rest of the creditors in the fund to be distributed.

The mortgages in this case, as has been several times said, were executed for the security of Dawson and Norwood, and therefore, as has already been decided, the holders of the paper of Jones, endorsed by these parties, given in exchange for the